IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3277 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARAMSAD URBAN COOPERATIVE BANK LTD

Versus

PRADEEPBHAI M PATEL

Appearance:
1. Special Civil Application No. 3277 of 1989
MR UDAY JOSHI FOR M/S TRIVEDI & GUPTA for Petitioner No. 1
RULE SERVED for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/01/2002

ORAL JUDGEMENT

#. Heard Mr.Uday Joshi, learned advocate for M/s Trivedi and Gupta Associates appearing on behalf of the petitioner. Though, notice of rule has been served on the respondent No.1, none remained present on his behalf nor any Vakalatnama has been filed on behalf of the respondent No.1.

#. In the present petition, the petitioner has challenged two orders, of which, pursuant to the order passed by the Labour Court, Nadiad below Exh.2 dated 8th November, 1985, wherein the Labour Court has granted 50 % wages as subsistence allowance during the pendency of the departmental inquiry against the respondent No.1. Thereafter, this interim relief order was challenged by the petitioner before the Industrial Court by way of Revision Application being Revision Application No.24/1985 and the said revision application is also rejected by order dated 30th November, 1988.

#. In the present petition, RULE has been issued by this Court on 4th May, 1989. Thereafter, this Court has passed interim order on 27th June, 1989 granting interim relief in terms of para-8[B] on condition that the petitioner shall deposit the entire awarded amount in the labour court, Nadiad within four weeks from today. However, the respondent workman was permitted to withdraw the said amount on furnishing the security to the satisfaction of the labour court concerned. The petitioner was further directed to go on regularly paying the future subsistence allowance at the rate of 50 % of the salary to the respondent employee till the disposal of this petition. The respondent also made a statement that as per the award of the Board of Nominee, in case No.406/1986, he will pay Rs.150/- per month as installments towards the said award. Learned advocate Mr.Uday Joshi, for the petitioner has submitted that the petitioner bank is not having any service rules which require the bank to pay suspension allowance to the employee who has been suspended pending departmental inquiry. Therefore, the petitioner bank is not duty bound to pay any amount of suspension allowance to the concerned employee who has been suspended during pendency of the departmental inquiry. Therefore, the decision taken by the petitioner bank not to pay suspension allowance to the concerned employee during the suspension period is legal and valid. Learned advocate Mr.Joshi has also submitted that even Standing Order which apply to the petitioner bank, wherein also there is no such provision which provides that suspension allowance is

required to be paid to the concerned employees during suspension period. The Labour Court has considered these aspects of the matter and also considered the relevant provisions of Section 22[5] of the Standing Orders as also the submissions of the petitioner bank that there is no rule or provision to provide suspension allowance to the employee who has been suspended during pendency of the inquiry, the labour court having appreciated the material on record, considered equity and come to the conclusion that once the employee has been suspended, he is not terminated by the employer and therefore, he remained in service with employer and hence, the concerned employee, during suspension period, is not entitled to work anywhere and therefore, in such circumstances relation between the employer and the employee is continued and does not extinguished and as result thereof, the employee is entitled to some allowance to establish and subsist the relationship between employer and employee and accordingly, considering this proposition and basis, the labour court has granted 50 % wages as subsistence allowance to the concerned employee. Similarly, this aspect has also been examined by the industrial court in revision application No.24 / 1985 in its detailed judgment which is running in at least 22 pages, wherein all the aspects have been taken into account and ultimately the Industrial Court has come to the conclusion that after referring various decisions of the Apex Court and other High Courts that principles as laid down in the aforesaid decisions, so far the facts of the present case are concerned, it is clear that the principles as laid down in Fakirbhai's case would apply and it will not make any difference even if the case is governed under the B.I.R.Act and in the circumstances, industrial Court found that the order passed by the labour court, Nadiad holding that the Bank should pay 50 % of the basic wages plus D.A. etc from the date of suspension till the inquiry is completed is legal and proper.

#. I have perused the both the orders impugned in this petition passed by the labour court as well as the Industrial Court. The view taken by the labour court as well as the industrial court confirming 50 % wages as subsistence allowance during the pendency of the inquiry is just, proper and reasonable. If there is no rules, then the employer cannot take stand that they are not bound to pay any amount of suspension allowance. Ultimately, just, fair and reasonable approach was required to be taken by the employer considering the fact that if they have powers to suspend the employee, in that case, they must pay reasonably to the employee/s so that

the employee/s can maintain his family and livelihood. Therefore, according to my opinion, no error either of jurisdiction or factual, has been committed by the labour court as well as industrial court. As such, there is no procedure irregularity committed by the both the Courts below which requires any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. However, it is noticed that this Court has passed interim order on 27th June, 1989 with direction to the petitioner bank to deposit the awarded amount as per the order passed by the labour court, Nadiad within four weeks from the date of the order. According to the interim order, if the said amount has already been deposited by the petitioner bank before the labour court, in that case, it is directed to the labour court to pay the said amount to the respondent No.1 immediately without any delay provided said amount is not withdrawn by the respondent workman. However, if the petitioner bank has not deposited the said amount so far, in such eventuality, the petitioner bank is directed to pay said amount as per the interim order dated 27th June, 1989 to the respondent No.1 - workman within period of one month from today.

#. In view of above observations and directions, the petition without any substance, ordered to be dismissed accordingly. Rule discharged with no order as to costs. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 10-1-2002 [H.K.Rathod, J.]

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